

Magistrate Judge

05-CR-05853-ORD

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DARRYL M. BURKE,

Defendant/Petitioner

NO. CR05-5853

FINDINGS AND ORDER ACCEPTING
DEFENDANT FOR DEFERRED
PROSECUTION, APPROVING
TREATMENT PLAN, AND
DIRECTING DEFENDANT TO TAKE
TREATMENT AS PRESCRIBED

(Clerk's Action Required)

THIS MATTER, coming on for hearing this 17th day of April, 2006, upon the defendant's Petition for Deferred Prosecution; the defendant appearing in person and by his attorney, Philip Wakefield, and the United States of America being represented by Barbara J. Sievers, Assistant United States Attorney; the Court, having examined and incorporated into the record Petitioner's Petition and Statement in support of deferred prosecution, the evaluation and treatment report prepared Action Association Counseling Services and Community Counseling Center of Las Vegas, Nevada, and the files and records herein, being fully advised in the premises, does now make and enter the following:

I. FINDINGS OF FACT

A. On or about the 24th day of September, 2005, Petitioner was charged with the offenses charged in the Information. This offense occurred as a direct result of alcoholism/chemical dependency problems;

1 B. Petitioner suffers from an alcohol/drug problem and is in need of
2 treatment;

3 C. The probability of similar misconduct in the future is great if the problem
4 is not treated;

5 D. Petitioner is amenable to treatment;

6 E. An effective rehabilitative treatment plan is available to Petitioner through
7 Action Association Counseling Services and Community Counseling Center of
8 Las Vegas, Nevada, an approved treatment facility as designated by the Code of Federal
9 Regulations, and Petitioner agrees to be liable for all costs of this treatment program;

10 F. That Petitioner agrees to comply with the terms and conditions of the
11 program offered by the treatment facility as set forth in the diagnostic evaluation from
12 Action Association Counseling Services and Community Counseling Center of
13 Las Vegas, Nevada, attached to Statement of Petitioner filed herewith, and that
14 Petitioner agrees to be liable for all costs of this treatment program;

15 G. That Petitioner has knowingly and voluntarily stipulated to the
16 admissibility and sufficiency of the facts as contained in the written police report
17 attached to Statement of Petitioner filed herewith.

18 H. That Petitioner has acknowledged the admissibility of the stipulated facts
19 in any criminal hearing or trial on the underlying offense or offenses held subsequent to
20 revocation of this Order Granting Deferred Prosecution and that these reports will be
21 used to support a finding of guilt;

22 From the foregoing FINDINGS OF FACT, the Court draws the following:

23 **II. CONCLUSIONS OF LAW**

24 A. That the above-entitled Court has jurisdiction over the subject matter and
25 Petitioner DARRYL M. BURKE, in this case;

26 B. That Petitioner's Petition for Deferred Prosecution meets the
27 requirements of Code of Federal Regulations;

1 C. That the diagnostic evaluation and commitment to treatment meets the
2 requirements of Code of Federal Regulations;

3 D. That Petitioner is eligible for deferred prosecution.

4 **III. ORDER**

5 Having made and entered the foregoing FINDINGS OF FACT and
6 CONCLUSIONS OF LAW, it is hereby

7 ORDERED that the defendant is accepted for deferred prosecution. The
8 prosecution of the above-entitled matter is hereby deferred for a five (5) years pursuant
9 to Code of Federal Regulations, upon the following terms and conditions:

10 A. Petitioner shall be on probation for the deferral period and follow the
11 rules and regulations of probation;

12 B. Petitioner shall enroll in and successfully complete the two-year treatment
13 program recommended by Action Association Counseling Services and Community
14 Counseling Center of Las Vegas, Nevada, according to the terms and conditions of that
15 plan as outlined in the diagnostic evaluation, a true copy of which is attached to the
16 Petition and incorporated herein by reference. Petitioner shall not change treatment
17 agencies without prior Probation approval;

18 C. The treatment facility, Action Association Counseling Services and
19 Community Counseling Center of Las Vegas, Nevada, shall file with the United States
20 Probation Office status reports of Petitioner's compliance with treatment, monthly
21 during the first year of the deferred prosecution period and every three (3) months
22 during the second year. The Court may increase the frequency of these reports at its
23 discretion;

24 D. Petitioner shall notify U.S. Probation within 72 hours of any residence
25 change.

26 E. Petitioner shall abstain during the deferred prosecution period from any
27 and all consumption of alcoholic beverages and/or non-prescribed mind-altering drugs;

1 F. Petitioner shall not operate a motor vehicle on the public highways
2 without a valid operator's license and proof of liability insurance sufficient to comply
3 with the state laws on financial responsibility;

4 G. Petitioner shall be law abiding and shall not commit any alcohol/drug
5 related offenses or other criminal offenses during the period of deferral,

6 H. Petitioner shall notify U.S. Probation within 72 hours of being arrested,
7 questioned, or cited by law enforcement.;

8 I. In the event that Petitioner fails or neglects to carry out and fulfill any
9 term or condition of his treatment plan or violates any provision of this Order or any
10 rule or regulation of his probation officer, upon receiving notice, the Court shall hold a
11 hearing to determine why Petitioner should not be removed from deferred prosecution
12 and prosecuted for the offenses charged;

13 J. In the event the Court finds cause to revoke this deferred prosecution, the
14 stipulated police reports shall be admitted into evidence, and Petitioner shall have her
15 guilt or innocence determined by the Court;

16 K. That the statement of Petitioner for deferred prosecution shall remain
17 sealed, and all subsequent reports or documents relating to his treatment information
18 shall be sealed, to maintain confidentiality of Petitioner's treatment information;

19 L. That the Department of Licensing be notified of this Order accepting the
20 Petitioner for deferred prosecution;

21 M. Upon proof of Petitioner's successful completion of five years deferral
22 period in this Order, the Court shall dismiss the charges pending against Petitioner.

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1 N. Additional conditions: follow conditions
2 1-16 in the Non-Guideline Presentence
3 Report

4
5 DONE IN OPEN COURT this 17th day of April, 2006.

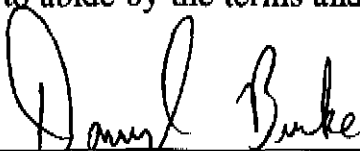
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7 
8 UNITED STATES MAGISTRATE JUDGE

9 Presented by:

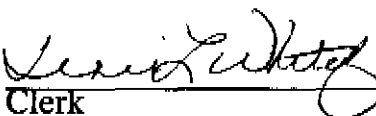
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11 
12 PHILIP WAKEFIELD
13 Attorney for Petitioner

14 I have received a copy of the foregoing Order of Deferred Prosecution. I have
15 read and understand its contents, and agree to abide by the terms and conditions set
16 forth herein.

17 Dated: April 17, 2006

18 
DARRYL M. BURKE
Petitioner

19
20 I certify that a copy of this signed Order was mailed to the subject treatment
21 facility, on April 18, 2006. The United States Probation Office was also
22 furnished a copy of this Order.

23 
Deputy Clerk